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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Carriage of the Transmissions |) | CS Docket No. 98-120 |
| of Digital Television Broadcast Stations |) | |
| |) | |
| |) | |
| Amendments to Part 76 |) | |
| of the Commission's Rules |) | |
| To: The Commission | | |

JOINT COMMENTS

Schwartz, Woods & Miller, on behalf of Barry Telecommunications, Inc., Channel 5 Public Broadcasting, Inc., KTEH-TV Foundation, Metropolitan Board of Public Education, Mid-South Public Communications Foundation, Milwaukee Area Technical College District Board, Mississippi Authority for Educational Television, New Jersey Public Broadcasting Authority, Rhode Island Public Telecommunications Authority, University of North Carolina Center for Public Television, University of Southern Colorado, WHMT Educational Telecommunications, and WXXI Public Broadcasting Council , collectively referred to herein as the Joint Parties (see Attachment A), pursuant to Section 1.429 of the rules, hereby files comments in the above-referenced Notice of Proposed Rulemaking (Notice) respecting the cable television system Digital Television (DTV) carriage obligations In support thereof, the following is shown:

A. Background

1. The Joint Parties are licensees of public television facilities in many communities and areas throughout the United States. For decades, they have provided cardinal noncommercial educational service in furtherance of their collective mission to inform, educate and entertain the American public. Public television continues to afford

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the public with the only freely-available over-the-air program service alternative to commercial television fare.

2. The Joint Parties are committed to making the DTV transition. They believe that digital television will provide public broadcasters a great opportunity to enhance their service to the public in furtherance of their collective mission. It is critical to their survival. At the same time, as the Commission is well aware, this transition is enormously expensive and entails substantial risks. The Joint Parties are convinced that the success of public digital television will depend in no small measure upon its wide availability to the public through cable television systems.

3. Preliminarily, the Joint Parties observe that the rationale which applied to sustain the validity of mandatory carriage rules in connection with analog NTSC channel carriage applies with equal or greater weight to mandatory cable carriage of digital signals. The Supreme Court has clearly ruled that must-carry rules are constitutional and appropriate means of furthering content-neutral government interests in light of the position of cable operators as programming gatekeepers. Cable operators have the power and economic incentive to constrain the efforts of broadcasters generally, and public broadcasters in particular, to reach the public with their over-the-air program services. Congress has given the Commission ample authority to promulgate digital must-carry rules, and the Supreme Court has upheld that authority. Moreover, the existing analog must-carry rules contain the template for carriage obligations which can readily be applied in the digital world.

4. While the Joint Parties understand that various technological issues need to be resolved, they urge the Commission to mandate the broadest possible mandatory carriage provisions at the earliest possible time. Digital conversion is enormously

expensive. It is anticipated that public television digital service, like public television analog service, will be made possible through substantial federal support as well as substantial matching local and state support. In short, the American public will provide basic financial support for digital public television. Non-carriage of digital public television will threaten the viability of the service at the expense of the public.

B. Basic Carriage Obligations

5. Carriage of digital public television is especially critical during the transition period when digital service is in its nascent stages and rapid public acceptance is of paramount importance. Accordingly, of the seven carriage alternatives set forth by the Commission, the Joint Parties strongly support the principle that all cable systems should be required to carry both the DTV and analog NTSC signal of any noncommercial station currently entitled to must-carry status under the rules applicable to NTSC channels which were adopted pursuant to the 1992 Cable Act.¹ It must be stressed that, although such an approach might seem to place an onerous burden upon cable systems, DTV conversion will take many, if not most, public television stations years to accomplish. As a general matter, the cable industry is undergoing a massive conversion to digital capability which will afford cable operators substantial digital carriage capacity in the relatively near future. Under these circumstances, the Commission should require that, during the transition period, cable operators carry both

¹In this regard, the Commission should require such dual carriage regardless of whether or not a public broadcaster's digital and analog signals entail "substantial duplication" of programming. As used in the 1992 Cable Act, that provision was clearly designed to apply to program duplication by separate licensees. (Indeed, digital/analog duplication was not even an issue at the time of the 1992 Cable Act's passage.) It may not be used here to justify excluding either of the broadcaster's signal offerings from carriage requirements.

the analog and digital signals of all public television stations entitled to carriage under the 1992 Cable Act. Digital carriage obligations would evolve naturally as public television stations implement digital operations.

6. While the Joint Parties believe that cable systems serving the vast majority of subscribers will acquire ample digital carriage capacity over the next few years to include carriage of digital public television signals, they also recognize that smaller systems may be slower to develop this capacity. The Commission could create limited exemptions for these systems, relieving them of certain digital carriage obligations during the earlier years of the transition period. So, for example, smaller cable systems with limited capacity could be required to carry fewer qualified public television stations. In this regard, the Joint Parties suggest that adoption of rules which mirror the relief afforded smaller-capacity systems by the 1992 Cable Act would be appropriate in the case of digital carriage obligations. As these systems expand digital channel capacity, their digital public television carriage obligations would increase. In this manner, digital public television would be made available throughout the country in a manner which does not place an undue burden upon the cable industry generally and upon smaller cable systems in particular.

C. Manner of Carriage

7. The Joint Parties urge the Commission to look to the current regulatory regime governing cable carriage of analog signals as the basis for establishing rules regarding the manner of digital public television carriage. Thus, the Commission should require cable operators to carry qualified digital public television stations in the basic service tier. With respect to channel position, the Joint Parties urge the Commission to afford the public television licensee the option of electing the channel on which its

digital signal is to be carried to assure that the licensee can retain its channel identity and to assure that its digital and analog signals can be found together on the cable system. Such carriage must encompass the full primary video signal provided by the public broadcaster, including all related audio and data, whether or not that signal entails multiple program streams. Cable operators should likewise be required to provide digital public television signals without material degradation; in this regard, the term "material degradation" should bar a cable operator from altering a digital signal in any manner which results in signal of a lesser quality than that delivered by the broadcaster to its viewers and to the cable system.

D. Ancillary and Supplementary Services

8. The Joint Parties recognize that the 1996 Telecommunications Act explicitly excludes "ancillary and supplementary services" from cable carriage requirements and observe that the Commission is currently considering the meaning of the term in an ongoing proceeding. They desire to stress, however, their view that the term should be narrowly defined. Accordingly, they urge the Commission to require carriage of any digital service which is related to their noncommercial educational purposes and objectives. In this regard, whether or not a fee is charged for a particular service should not necessarily be the touchstone of whether the service is "ancillary"; so, for example, the Joint Parties submit that instructional programming provided for a fee would be related to the public broadcaster's educational purposes, would not be considered "ancillary" and therefore would be entitled to carriage. The true determinant of this issue should be the nature of the service and not whether or not it is provided for a fee.

E. Conclusion

9. Digital television contains the potential for enormous opportunities. The conversion to digital television also entails enormous costs and uncertainties. Public broadcasters are working diligently to move into the digital age. The right to substantially complete carriage of their digital and analog signals during the transition period is critical to success of digital public television. For this reason, the Commission should move expeditiously to adopt digital must-carry rules.

WHEREFORE, for the foregoing reasons, the Joint Parties respectfully urge the Commission to adopt digital mandatory carriage rules consistent with the views expressed herein.

Respectfully submitted,

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ATTACHMENT A

Barry Telecommunications, Inc.
WXEL-TV, West Palm Beach, FL

Channel 5 Public Broadcasting, Inc.
KNPB(TV), Reno, NV

KTEH-TV Foundation
KTEH-TV, San Jose, CA

Metropolitan Board of Public Education
WDCN-TV, Nashville, TN

Mid-South Public Communications Foundation
WKNO-TV, Memphis, TN

Milwaukee Area Technical College District Board
WMVS(TV), Milwaukee, WI
WMVT-TV, Milwaukee, WI

Mississippi Authority for Educational Television
WMAA(TV), Columbus, MS
WMPN-TV, Jackson, MS
WMAB-TV, Mississippi State, MS
WMAE-TV, Booneville, MS
WMAH-TV, Biloxi, MS
WMAI(TV), Cleveland, MS
WMAO-TV, Greenwood, MS
WMAU-TV, Bude, MS
WMAV-TV, Oxford, MS
WMAW-TV, Meridian, MS
WMYC(TV), Yazoo City, MS

New Jersey Public Broadcasting Authority
WNJB(TV), New Brunswick, NJ
WNJN(TV), Montclair, NJ
WNJS(TV), Camden, NJ
WNJT(TV), Trenton, NJ

Rhode Island Public Telecommunications Authority
WSBE-TV, Providence, RI

University of North Carolina Center for Public Television

WUNC-TV, Chapel Hill, NC
WUND-TV, Columbia, NC
WUNE-TV, Linville, NC
WUNF-TV, Asheville, NC
WUNG-TV, Concord, NC
WUNJ-TV, Wilmington, NC
WUNK-TV, Greenville, NC
WUNL-TV, Winston-Salem, NC
WUNM-TV, Jacksonville, NC
WUNP-TV, Roanoke Rapids, NC
WUNU(TV), Lumberton, NC

University of Southern Colorado

KTSC(TV), Pueblo, CO

WHMT Educational Telecommunications

WMHQ(TV), Schenectady, NJ
WMHT-TV, Schenectady, NJ

WXXI Public Broadcasting Council

WXXI-AM/FM/TV, Rochester, NY